

State/Territory: HAWAII

Waiver granted accordance with section 121(c)(4)(B) of the Immigration Reform and Control Act of 1986. This waiver does not apply to the Citizen/Alien declaration required by IRCA. Waiver was granted in 11/93.

The State will continue to verify alien status through the Citizen/Alien declaration and verification of alien documents. Alien status will be verified as a condition of eligibility.

TN No. 97-006

Supersedes

TN No. \_\_\_\_\_

Approval Date DEC 1 1997

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SUMMARY OF HAWAII STATE LAW REGARDING  
AN INDIVIDUAL'S RIGHT TO MAKE MEDICAL TREATMENT DECISIONS

(Hawaii Revised Statutes, Section 327D)  
(As amended by Act 321, effective July 1, 1991)

November 1, 1991

1. Hawaii has adopted a strong public policy in favor of the person's right to accept or refuse treatment. Hawaii law provides that "all competent persons have the fundamental right to control the decisions relating to their own medical care, including the decision to have medical or surgical means or procedures calculated to prolong their lives provided, continued, withheld or withdrawn. The artificial prolongation of life for persons with a terminal condition or a permanent loss of the ability to communicate concerning medical treatment decisions, may secure only a precarious and burdensome existence, while providing nothing medically necessary or beneficial to the person."

2. A competent adult may make their own health care decisions. Hawaii law permits a competent adult (age 18 or over) to make a written declaration in advance (often called a living

*Summary of Hawaii Law Regarding  
Medical Treatment Decisions/Living Wills  
Executive Office on Aging/Department of Human Services  
November 1, 1991*

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will or advance directive), instructing his or her physician to provide, withhold or withdraw life-sustaining procedures under certain conditions, such as a terminal condition or where the patient has a permanent loss of ability to communicate with others due to irreversible brain injury or coma. In other words, the person has a right to choose: the person can request all available treatment in order to stay alive as long as possible, or the person can refuse some or all treatment -- even if the treatment might keep the person alive or prolong their life.

3. How is the advance directive/living will executed? The person's written instructions must be signed by them or by someone else in the person's presence and at their instruction. It must be witnessed by two witnesses not related to the person and not currently involved with the person's medical care. The signature's of the person and the two witnesses must be notarized (all at the same time).

4. The person's instructions do not have to be in writing, but it is strongly preferred. Although written advance directives are preferable, they are not required. Hawaii law also recognizes a "verbal statement or statements if they are consistent, made by the patient to either a physician or to the patient's friend or relative." Such statement(s) "may be considered by the physician

*Summary of Hawaii Law Regarding  
Medical Treatment Decisions/Living Wills  
Executive Office on Aging/Department of Human Services  
November 1, 1991*

---

in deciding whether the patient would want the physician to withdraw or to withhold life-sustaining procedures." However, as a general proposition, there is less doubt and potential confusion with written directives. It is sound policy to encourage written advance directives instead of verbal ones if the person has any interest in making their health care wishes known in advance.

5. The person's medical record. The living will or advance directive is to be made a part of the person's medical record, and all inpatient health care facilities must develop a system to visibly identify when a patient's chart contains an advance directive. A copy of the person's living will or advance directive should normally be sufficient (at least for filing purposes). The Hawaii law does not require that an original be in each of the patient's various medical files.

6. What the physician has to do. An attending physician who is aware and in possession of the patient's advance directive shall immediately take steps to certify that the patient is now in the condition described in the person's living will. Thereafter, the attending physician must a) follow as closely as possible the terms of the patient's directive, or b) if the physician is not willing to comply with the patient's advance directive, the physician must arrange for transfer of the patient to another physician's care

*Summary of Hawaii Law Regarding  
Medical Treatment Decisions/Living Wills  
Executive Office on Aging/Department of Human Services  
November 1, 1991*

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without unreasonable delay.

7. Revocation. Hawaii law makes it easy for the patient to revoke his or her advance directive, and the patient may revoke it at any time after it was executed, by various methods (both written and verbal), including:

- \* the declarant's causing it to be torn, defaced, or otherwise destroyed, or
- \* by executing a written revocation, or
- \* by the declarant's unambiguous verbal statement, in front of two adult witnesses, of the declarant's intent to revoke, or
- \* by the declarant's unambiguous verbal expression to an attending physician.

8. Euthanasia. Nothing in the Hawaii law is intended to condone, authorize, or approve mercy killings or euthanasia.

9. Effect upon life insurance/suicide. Compliance with the terms of a person's advance directive does not constitute suicide nor modify the terms of an existing policy of life insurance.

10. If there is no valid advance directive. Hawaii law also has a "catch-all" provision. In the absence of a valid advance directive, "ordinary standards of current medical practice will be followed."

11. Other states. Hawaii law recognizes living wills executed

*Summary of Hawaii Law Regarding  
Medical Treatment Decisions/Living Wills  
Executive Office on Aging/Department of Human Services  
November 1, 1991*

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in other states if the out-of-state document substantially complies with Hawaii law.

12. Durable Power-of-Attorney for Health Care. This is a document where the person appoints someone else (usually called a proxy, attorney-in-fact, or substitute decision-maker) to make some, many, or all medical treatment decisions for them, often including the right to make decisions to withhold or withdraw life-sustaining medical treatment. Hawaii law does not expressly authorize such a document, nor does Hawaii law expressly prohibit such a document; therefore, the law is not yet clear in Hawaii on whether such a document is legally enforceable. (Note: accordingly, until Hawaii law is more clear on this issue, the individual health care provider will set their own policies on whether or not to honor a Durable Power-of-Attorney for Health Care, including those executed in other states or countries. Consumers may wish to check with their own health care provider regarding their policy on this issue.)

13. Living Wills Executed Before July 1, 1991. If the person's living will is an "old" one (signed before the new Hawaii law went into effect on July 1, 1991), the old living will may seriously restrict the person's wishes and rights. (Note: therefore, it is good policy for any person with an "old" living

*Summary of Hawaii Law Regarding  
Medical Treatment Decisions/Living Wills  
Executive Office on Aging/Department of Human Services  
November 1, 1991*

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will to carefully review it. Then the person can take advantage of the new law -- if they want to -- by executing a new living will.)

14. Without reliable evidence of the patient's intentions or wishes, such as where there is no living will, no verbal statements, the patient is a minor, and where the patient is a now-incompetent person whose wishes were not made known while they were competent, a guardianship proceeding in court may be necessary.

15. This is merely a summary of the new Hawaii law. It does not address all possibilities or describe all of the law. For individual situations, your health care provider or other expert should be consulted.